

MARINE AND PORT ADVISORY COMMITTEE

Meeting Minutes

PURSUANT TO Board of County Commission Resolution No. 057-1991 the Marine and Port Advisory Committee of Monroe County conducted a meeting on **November 4, 2015**, beginning at 6:00 PM at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

MARINE AND PORT ADVISORY MEMBERS:

David Makepeace, Chair	Present
Bill Kelly, Vice Chair	Present
James Fitton	Present
Phil Goodman	Absent
Paul Koisch	Present
Lynda Schuh	Absent
Mimi Stafford	Present

STAFF

Richard Jones, Sr. Administrator	Present
Celia Hitchins, Marine Biologist	Present
Peter Morris, Assistant County Attorney	Present

MOTIONS MADE

Motion 1

To approve minutes of August 4, 2015

Motion/Second	Passed
Bill Kelly/James Fitton	Unanimously

Motion 2

To put an agenda item on for the next meeting to discuss expanded Committee duties regarding fisheries

Motion/Second	Passed
Paul Koisch/Mimi Stafford	Three to two

Motion 3

To adjourn

Motion/Second	Passed
Paul Koisch, Bill Kelly	Unanimously

CALL TO ORDER

Chair Makepeace called the meeting to order at 6:00 p.m.

PUBLIC MEETING

Item 1. Approval of draft minutes from August 4, 2015 MPAC Meeting

Motion: Mr. Kelly made a motion to approve the minutes from the August 4, 2015 MPAC meeting. Mr. Fitton seconded the motion. There was no opposition. The motion passed unanimously.

Mr. Jones welcomed Bob Mitchell, Chair of the Village of Islamorada's Nearshore Water Committee. Mr. Jones then mentioned that if anybody wants to have an item brought to the Committee that was not suggested at the previous meeting they can just let staff know, preferably 2 weeks in advance, to put it on the agenda and have it put on the publicly-noticed agenda.

Mr. Morris then clarified for the Committee Members that the resolution approved from the August MPAC meeting that was to be transmitted to the DAC created a risk of liability for interference with an existing or anticipated contract. For that reason the resolution was not transmitted to the TDC. In order to avoid inviting such liability again the Committee should stay within the bylaws established for the MPAC. Chair Makepeace agrees with that clarification. Mr. Morris explained that the resolution could arguably be outside of the MPAC's scope of authority, but an argument could also be made that the MPAC has authority because there is no express prohibition on this subcommittee rendering resolutions outside of its bylaws. When a committee is more explorative with their authority an elevated risk of liability is invited in the context of a situation involving a contract. Mr. Jones added that the MPAC provides recommendations to the Board of County Commissioners (BOCC) only, as outlined in their duties. Chair Makepeace pointed out that although the exact same letter could have been addressed to the BOCC, the timing issue was the reason that did not happen. Mr. Koisch feels that there should be a 60- to 90-day window to get a permit for a waterborne activity. Mr. Kelly agreed that the timing issue was cause for concern.

Chair Makepeace suggested bringing back as a topic at the next MPAC meeting a recommendation to the BOCC that there be more comment time and lead time regarding water-related applications. Mr. Koisch believes the public should also have a larger window of response time. Mr. Morris commented that it is not within this subcommittee's enabling legislation to make that kind of recommendation. Conceivably a recommendation could be made to expand the Committee's duties, but that may not be well-received considering that the history of enabling legislation for this subcommittee has never been that expansive. Ms. Hitchins pointed out that special meetings of the Committee can be called for a priority timeline. Chair Makepeace believes that because every agency has their own timeline a hole is created in the process that applicants could conceivably navigate through to achieve obtaining their permit and funding. Mr. Morris informed the Committee that the subject application was either denied or pulled by the TDC. Mr. Kelly confirmed that the applicant was denied any funding for the TDC application in all three districts.

Mr. Jones asked for clarification on what this Committee's involvement would achieve. Chair Makepeace articulated the concern was that there was an insufficient amount of time to address the issue because of the varying timelines, which should be formalized or established to give the public more opportunity to weigh in on the matter before it goes in front of the BOCC or the DAC. Mr. Jones stated that falls outside of the duties and the mission of the MPAC. The

process of the TDC and its applicants has nothing to do with Marine Resources. Ms. Stafford asked if Marine Resources conducts permit application review. Mr. Jones said no. Mr. Morris added that the Land Development Code does not confer to the Marine Resources Office the authority to get involved in those approval requests. Mr. Fitton believes members of the MPAC should be able to educate and advise the BOCC of what they know from their assorted backgrounds. Mr. Kelly agreed with Mr. Fitton. Mr. Jones stated this Committee is more than welcome to make a recommendation to the BOCC. Mr. Jones reminded the Committee Members that any recommendations have to fall within the list of the MPAC's duties. Those duties do not include anything fisheries-related. The resolution indicates that if the MPAC wants to do anything not listed in the duties a request has to be sent to the BOCC to ask for permission for approval to work on something beyond those duties listed. The fact that the BOCC appointed one position from both the SAC and the Commercial Fishing Association causes a bit of a Catch 22 situation because the committee's duties are not associated with fisheries. Mr. Kelly emphasized the MPAC does have a responsibility to address compatibility of activities that take place on the water and give a recommendation, but obviously it needs to be made to the BOCC directly.

Chair Makepeace suggested bringing an agenda item to the next meeting on this as well as recommending to the BOCC certain considerations when applications for these activities that have the possibility of causing a conflict and having an impact on the resources comes before them. Mr. Kelly read aloud the MPAC's duty under Section 2, Item 4: "Provide recommendations regarding the preservation and enhancement of public water access." Chair Makepeace asked whether the other Committee Members would like to ask the BOCC for an additional duty related to fisheries. Mr. Kelly does not believe that is warranted because it is already captured in the existing duties. Mr. Koisch suggested ending the discussion for now and making the expanded duties an agenda item for the next meeting. Mr. Morris explained that the Land Development Code is surprisingly limited in terms of its scope of regulatory and zoning jurisdiction over the water. Marine Resources does not really have that much authority in that area. Chair Makepeace asked to remove the first recommendation off the table regarding considerations on applications for water-related activities. Mr. Kelly pointed out that specific rules and regulations governing fishing and water activities are already in place. Chair Makepeace asked to keep the discussion on expanded duties on the agenda for next time even if between now and then the Committee Members decide they do not want to or cannot get involved in that.

Motion: Mr. Koisch made a motion to put an agenda item on for the next meeting to discuss expanded Committee duties regarding fisheries. Ms. Stafford seconded the motion. Chair Makepeace called the roll. Ms. Stafford, Mr. Koisch and Mr. Fitton were in favor of the motion. Mr. Kelly and Chair Makepeace were not in favor of the motion. The motion passed three to two.

Item 2. Update on Pumpout Program

Ms. Hitchins showed the numbers of pumpouts for the last quarter. Ms. Hitchins reported that the number of pumpouts continue to exceed the current quota of 1500 per month. The gallons removed track along the same line of trending upwards compared to last year's numbers. Mr.

Jones then provided an update on PumpOut USA's contract with the County. Mr. Jones explained that the vendor gets paid from two sources: Monroe County's Boating Improvement Funds and the DEP Clean Vessel Act (CVA) Program. DEP has made the decision that future grants for the County's pumpout program will go directly to the County rather than to the contractor because of the need for uniformity around the state using Monroe County as a model. Mr. Jones has been working closely with the CVA Program to see the transition of grant funding directly to the County. As of November 1, 2015, the County began a new contract with PumpOut USA for one more year, which will amend the previous contract. DEP has awarded the County a grant for \$250,000 that began on November 1, 2015, and in addition the Legislature has budgeted \$100,000 to go towards the County's pumpout program, also effective November 1, 2015. For the next year collectively the cost to the County is going to be \$729,800 for one year with the ability to get reimbursed \$350,000 of that from the State. Marine Resources will be bringing these changes on the agenda to the BOCC on November 17, 2015. Mr. Jones explained that staff has been working on the change in funding of the three agreements for months and is anticipated to be approved on November 17. Mr. Jones clarified for Ms. Stafford the cost to the County remains at \$379,800, but the upfront cost of \$729,800 is paid for the one year of service and then reimbursement requests are submitted quarterly to DEP for reimbursements. Our concern is not getting 100% reimbursement which would result in added costs to the County over current costs. The new financial arrangements simplify things for DEP and the contractor, but it has added significantly to staff's workload.

Mr. Koisch asked if the BOCC is willing to keep funding the pumpout program. Mr. Jones replied that the BOCC has shown no concern for the reorganization of how the funding is happening, but their concern is continuing to subsidize 100 percent of the cost of a pumpout for all the boaters. Staff will discuss the options, implications, and ideas for charging the boaters something for pumpout at the January 2016 BOCC meeting. Currently the cost of a pumpout is around \$40 a pumpout with \$20 from the County BIF fund and \$20 from State funding. The options that will be discussed are: A, charging \$5, which is a fraction of the real cost and will not even cover the cost of administration of the \$5; or, B, charging \$10, which will be a quarter of the real cost. The CVA has a process whereby they will not give a grant if more than a certain amount is charged for a pumpout. Regardless, charging anything could reduce usership significantly. Also to be discussed with the BOCC is a comp plan amendment moving through the system requiring all marinas to provide their own pumpouts. Staff predicts it will take two to three years to get every marina in Unincorporated Monroe County to come online with pumpouts. A third of the pumpout customers are at marinas and if marinas are weaned off of the County's pumpout service it will be a good thing for the County. A major concern is utilization of the pumpout service plummeting if the County charges for this service. Ms. Hitchins has researched the mobile vessel pumpout programs in the state and found that most either charge nothing, charge \$5, or it is included in a mooring fee.

Mr. Fitton asked what happens with the effluent after it is pumped out. Mr. Jones explained that the pumpout contractor offloads the effluent at a land-based wastewater facility and pays any fees that are assessed to them and this is included in the \$729,800. The only criteria is the contractor has to do 1500 pumpouts a month or more to get that full amount of money. Chair Makepeace noted that citizens in the County are all paying for a sewer hookup and then paying taxes for a pumpout. Mr. Jones clarified that the pumpout costs come from Boating

Improvement Funds, which is generated from recreational vessel registration fees. The public is not paying. The County's portion, \$379,800, comes from Boating Improvement Funds and the rest comes from the CVA, which comes from marine fuel taxes. Even though most live-aboards either cannot afford to pay for a pumpout or just will not pay for a pumpout, Chair Makepeace feels it is worth it for the County to pay for this service because the end result is better water quality. Ms. Stafford believes it is more cost effective for the County to pay for the pumpouts than trying to clean up and trying to enforce. Mr. Koisch disagreed and stated boaters need to take care of their effluent just like all the other citizens. Mr. Koisch is concerned that if there is ever another economic recession this pumpout service cannot continue if boaters are not paying for their own pumpouts. Chair Makepeace agreed with Mr. Koisch conceptually, but does not see a way to force somebody to pump out.

Mr. Jones mentioned another item on the agenda tonight is to discuss requiring proof of pumpout Keys-wide. Chair Makepeace likened that requirement to requiring vessel owners to take responsibility for their derelict vessels. Mr. Kelly thinks more education is needed and that the owners need to be encouraged to make a stop on their way back to home dock as opposed to dumping offshore. Mr. Jones pointed out that all live-aboards and cruisers are required to have proper MSDs on their vessels and it is illegal to dump sewage in the No Discharge Zone. Mr. Jones reported that staff believes the County's pumpout program removed over a quarter million gallons of sewage last year. Chair Makepeace feels if the proof of pumpout requirement goes into effect it may help with getting to the tipping point to help turn this issue around. Chair Makepeace suggested diverting a little bit of the funding away from the pumpout program or from some other source and into increasing enforcement until the tipping point is reached. Mr. Jones explained to Mr. Kelly that the County has information online regarding the pumpout program, as well as the contractor is required to have educational materials that they provide to marine service locations.

Ms. Stafford believes if there was some possibility of in the future including an additional fee into registration paid up front it would help augment or offset some of the costs. Mr. Kelly commented that there are some opportunities with the local radio stations of getting the pumpout information out. Mr. Jones noted that the primary problem is not lack of information, but anchored-out boats who will not lift their anchor to go pump out because of a lack of will or convenience. If the County is successful to get every marina in the Keys to have a pumpout facility it would greatly expand those sites where a boater can go into to pump out. That combined with proof of pumpout Keys-wide would result in a high rate of compliance. Staff is working with the County's legislative coordinator to expand Monroe County's authority to require proof of pumpout.

Item 3. Update on Derelict Vessel Program

Ms. Hitchins showed a graph illustrating the number of removals of derelict vessels in Monroe County. Ms. Hitchins reported that after performing a data analysis staff found that sunken vessels are only slightly more expensive to remove than floating vessels. The average removal cost for floating vessels is around \$3,000 compared to sunken vessels at \$4400 on average. A quarter of the vessels removed in the County are sunken, which is indicative that the majority of removals are occurring prior to the vessel sinking. Ms. Hitchins then gave a brief update on

grants for derelict vessels. The last funding cycle of FWC grants for derelict vessels has been closed out and the County has gotten their reimbursements back. Staff has applied for and been approved for the next funding cycle.

Mr. Jones then provided an update on some FWC workshops that have taken place across the state regarding the derelict vessel problem in trying to reduce or eliminate derelict vessels and improve the processing of them. Mr. Jones reported that eight interesting concepts resulted from a survey that was handed out at all of the meetings. These concepts came from other public workshops, not from FWC staff. Results of the survey, starting with the highest public support, were shown to the Committee Members. Concept No. 1 is for “at risk” to be regulatory rather than informational. Concept No. 2 is limitation on who may renew a vessel’s registration. The public suggested that only the owner or somebody given power of attorney for the owner can re-register a vessel. Concept No. 3 is the ability for the State to put a hold on the title of a derelict vessel until the vessel is taken out of a derelict vessel condition or some other criteria are met. Concept No. 4 is imposing penalties for registrations expired for more than six months. Concept No. 5 is the ability for officers who make personal contact with an owner of a derelict vessel being able to process it immediately as opposed to through the certified mail procedure. Concept No. 6 is a rapid removal process of derelict vessels with a value of less than \$2500. Mr. Jones pointed out that that would require a surveyor to be involved, which defeats the whole purpose of expediting the process. It is also undetermined at this time who is going to pay for the survey. Concept No. 7 is adding language to the list of criteria of “at risk.” Mr. Jones clarified that a floating structure is not considered a vessel, but the term “houseboat” is simply a use of vessel based on the number of days it is occupied. Concept No. 8 is for large vessels that would exceed most budgets to require insurance or a bond for the owner of such a vessel.

Mr. Jones suggested adding the concept of charging an additional fee of one dollar for vessel registrations statewide to go into a fund for derelict vessel removals which most workshop participants seemed to support. Also, Mr. Jones proposed, based on the high number of derelict vessels in Monroe County, that an additional one dollar fee is assessed for Monroe County registered vessels. The additional one dollar would provide Monroe County another \$20,000-40,000 to remove derelict vessels in Monroe County. All of these concepts will require legislative approval. Mr. Jones further stated that another recommendation made was at least for Monroe County, preferably statewide, imposing a time limit of 60 days on stored vessels that aims at prevention of derelict vessels. Mr. Jones mentioned that in the last couple of weeks there was a meeting of the House State Affairs Committee for public input on anchoring regulations. Representatives from Broward County were pushing to have more anchoring regulations specific to their area. There was a lot of public comment repeating the common arguments pitting boaters’ rights versus property owners’ complaints. Ms. Hitchins agreed to send the meeting video link to the committee members.

Ms. Hitchins then reported that the Sheriff’s Office has hired an officer to patrol the Lower Keys specifically for derelict vessels. That officer will be working closely with FWC to learn how the derelict vessel process works. There is already an officer that patrols from Marathon north, but the majority of their time is spent in Boot Key Harbor. There is also an FWC officer that patrols the Upper Keys. Mr. Jones commented that derelict vessel removals are a function of effort by enforcement and funding to remove them, which is balanced right now due to Ms. Hitchins

bringing in more derelict vessel money from grants. Mr. Jones is concerned that there could be more boats to remove than there is funding because of the additional enforcement. However, he mentioned that FWC might be allocated an additional \$1.5 million specifically for derelict vessel removal.

Chair Makepeace noted that the additional two dollars proposed to be assessed in Monroe County could result in removing an additional 12 boats per year in the county. Chair Makepeace then commended staff's efforts in addressing the derelict vessels in Monroe County.

Item 4. Update on Whale Harbor regulatory zone

Mr. Jones reported that as a result of a discussion at a prior MPAC meeting about boaters tying off to and damaging the buoys in the Whale Harbor zone, at the suggestion of a Committee Member staff looked into regulations for not being able to tie off on a buoy. Staff found a Florida statute that prohibits anybody from mooring or fastening a vessel to a lawfully placed uniform waterway marker. Staff got a permit from FWC to adhere "No tie off" decals on the buoys, which were placed approximately a month ago. The Whale Harbor zone has 80 buoys. The Village of Islamorada shares the concerns in this zone. The buoys are used to prevent boats from tearing up the seagrass and imposing a no-motor zone for safety reasons. The buoys were paid for through an FWC grant written and managed by Ms. Hitchins.

Mr. Mitchell expressed thanks on behalf of the Village of Islamorada for the buoys that were put in this zone. Chair Makepeace commented that the buoys around the sandbar and the channel are not as effective as they should be because of the boaters' behavior in that area. The buoys in the area south of that have been effective in reducing the number of people that run aground in that area. Chair Makepeace is hopeful that enforcement in the Whale Harbor zone will be helpful. Mr. Jones agreed that the buoys around the flats have been more effective than those around the sandbar. Mr. Jones credited the Committee's involvement in getting the stickers placed in this zone.

Mr. Kelly stated that there are two federal on-water law enforcement officers through the Sanctuary. Mr. Kelly noted that part of the problem on the southern side of Whale Harbor Channel is a bank that drops quickly, resulting in boaters trying to jump that flat section to get into the deeper water. Mr. Mitchell noted that the Sheriff's on-water deputies attend the Village's Nearshore Water Committee meeting and were an integral part of pointing out the gaps in the Village's buoy program. Ms. Hitchins mentioned that her last inspection of the seagrass flat in this zone revealed the presence of either recreational or commercial traps within the no-motor zone. Mr. Kelly asked Ms. Hitchins to take pictures of traps in areas like that so he can ask that any commercial traps in that area be moved someplace else. Chair Makepeace thanked staff for their effort to get those buoys placed in this zone.

Item 5. Update on Boat Ramps

Mr. Jones mentioned that Mr. Kelly asked about the closing of boat ramps on Summerland Key. Mr. Kelly clarified that two colleagues had expressed concern regarding three boat ramps that had been decommissioned. Mr. Jones replied that two boat ramps on Summerland that were

closed were likely never public, but were probably on privately-owned properties that at some point were closed off to the public by the owners. Someone thought there were no public access ramps on Summerland except for a kayak launch, but it is not a County facility. Mr. Jones asked Mr. Kelly to find out more specificity as to the sites his colleagues were referencing. Mr. Jones stated a general rule of thumb that if a boat ramp is not paved or not surfaced it is most likely not a public boat ramp.

Ms. Hitchins then reported on the Blimp Road boat ramp. There have been complaints regarding its shallow depth and that there is no accessory dock. Ms. Hitchins agreed that it is shallow, but 300 feet from the ramp it is the same depth so there is a limited controlled depth in the area. As a result, there were engineering limitations for creating a deeper ramp. This boat ramp was never intended to be a ramp to launch large vessels. Project Management is currently looking into doing a Phase 2 improvement to the accessory dock so boats can tie off when they launch. Chair Makepeace recommended placing signage indicating that the controlling depth is only three feet for preservation of the resource. Mr. Jones feels that the major complaint is that the County should have dredged further out when rebuilding the ramp, which was impossible for the County to do. Mr. Koisch suggested updating the Marine Resources website to include the controlling depths at boat ramps.

Mr. Hitchins then reported that Project Management has received permits on replacing the decking at Harry Harris, reslabbing the ramp and installation of an accessory dock at the Big Coppitt ramp, and putting in a new accessory dock and new slab on the Little Torch ramp. They are currently working on the bidding process now.

Item 6. Update on Pilot Program

Ms. Hitchins reported that FWC's data shows that in the managed anchoring zones six ordinance warnings have been issued for vessels that are in a pre-derelict condition. Not many proof-of-pumpout warnings are being issued because there is a high level of compliance through the County's pumpout service. Only a couple of warnings have been given out for presence of vessels in the no-anchor zone. Repeat citations continue to be issued because vessels cannot be kicked out of the no-anchor zone, but citations can be repeatedly given up to \$250. Overall there has been a high level of compliance and most of the vessels have been moving out of that zone. Staff is going to see if the new Sheriff's deputy assigned to derelict vessels can provide enforcement of the Pilot Program as well.

Item 7. Upcoming meeting schedule

Ms. Hitchins went over the tentative meeting schedule for 2016. She stated that in past years the August date had been a little bit of a conflict because of the beginning of lobster season. The August 2016 meeting is the week before lobster season and the date in November is not in conflict with Election Day this year. No objections were made to the proposed dates from the Committee Members.

Item 8. Committee discussion

Mr. Koisch asked that the new Sheriff's deputy be invited to attend the next MPAC meeting. Ms. Hitchins agreed to invite him. Mr. Kelly reiterated appreciation for the hard work of staff. Ms. Hitchins mentioned at the next meeting a new Chair and Vice Chair will be selected.

Item 9. Adjournment

Motion: Mr. Koisch made a motion to adjourn. Mr. Kelly seconded the motion. There was no opposition. The motion passed unanimously.